

DOCKET NO.: NNH-CV-17-6072389-S	:	SUPERIOR COURT
	:	
ELIYAHU MIRLIS	:	J. D. OF NEW HAVEN
	:	
v.	:	AT NEW HAVEN
	:	
YESHIVA OF NEW HAVEN, INC.	:	JANUARY 27, 2020
FKA THE GAN, INC. FKA THE GAN	:	
SCHOOL, TIKVAH HIGH SCHOOL AND	:	
YESHIVA OF NEW HAVEN, INC.	:	

PLAINTIFF’S POST-HEARING BRIEF

The plaintiff, Eliyahu Mirlis (“Plaintiff”), hereby submits his post-hearing brief following the hearing held on October 28, 2019, and December 9, 2019 (the “Hearing”). As fully set forth below, the Court should adopt the valuation of the property known as 765 Elm Street, New Haven, Connecticut (the “Property”) found by Plaintiff’s commercial real estate appraiser, Patrick S. Craffey (“Craffey”), of \$960,000.00.

I. GENERAL BACKGROUND OF THE CASE

The judgment that gave rise to this judgment lien foreclosure action arises was entered in the action captioned Eliyahu Mirlis v. Daniel Greer et al., No. 3:16-cv-00678 (MPS) (the “Underlying Action”), against the defendant, Yeshiva of New Haven, Inc. fka The Gan, Inc. fka The Gan School, Tikvah High School and Yeshiva of New Haven, Inc. (“Defendant”), and Daniel Greer (“D. Greer”). Plaintiff alleged the Underlying Action, *inter alia*, that beginning in 2002, when Plaintiff was between the ages of fifteen and seventeen years old and a boarding student at the school operated by Defendant, D. Greer—who is both an attorney and a rabbi, and who is and the president of Defendant and a member of its board of directors—repeatedly and continuously sexually abused, exploited, and assaulted him. On June 6, 2017, the United States District Court for the District of Connecticut entered a judgment (the “Judgment”) in favor of Plaintiff in the Underlying Action against Defendant and D. Greer in the amount of \$21,749,041.10. The

Judgment remains almost completely unsatisfied, with any minimal payments made having resulted from collection and foreclosure efforts of Mirlis. Plaintiff has been able to collect only \$277,124.51 on account of the Judgment from Defendant and D. Greer. In this action, Plaintiff seeks to foreclose the judgment lien (the “Judgment Lien”) encumbering the Property in order to collect some of the funds owed to him by Defendant.

On November 8, 2017, Plaintiff filed his Motion for Summary Judgment and supporting memorandum (Doc. Nos. 104, 105), which was granted as to liability by the Court on January 16, 2018 (Doc. No. 104.10). Defendant did not object to the Motion for Summary Judgment, but rather, filed a the Motion for Discharge of Judgment Lien on Substitution of Bond (Doc. No. 106) (the “Motion to Substitute”) on January 16, 2018, seeking have the Court substitute a “cash bond for the Property in the amount of the fair market value of the Property[.]” (Motion to Substitute, p.3.) On June 5, 2019, Plaintiff filed his Motion for Judgment of Strict Foreclosure (Doc. No. 113) (the “Motion for Judgment”) and the Appraisal Report of Valbridge Property Advisors conducted by Craffey (Doc. No. 114; Plaintiff’s Exh. 1) (the “Craffey Appraisal”). In response, Defendant filed Defendant’s (1) Objection to Motion for Judgment of Strict Foreclosure, (2) Motion to Discharge Judgment Lien and Substitute Bond, and (3) Motion to Continue hearing on Motion for Judgment of Strict Foreclosure (Doc. No. 115) (the “Foreclosure Objection”), seeking, *inter alia*, to have the Motion for Judgment denied because of a dispute as to the value of the Property and on account of the Motion to Substitute.

After being continued twice at the request of Defendant and over Plaintiff’s objections, the Hearing was held before the Court on October 28, 2019, and December 9, 2019. Each party called one witness, their respective appraisers, and submitted one exhibit, the reports of those appraisers.

II. THE HEARING

A. Testimony of Craffey and the Craffey Appraisal

At the hearing, Craffey was admitted as an expert in the field of real estate valuation. (Transcript of Hearing, Oct. 28, 2019 (“Oct. 28 Tran.”), 12:7-12.)¹ Craffey was retained to appraise the Property, which is a single-building school facility. (Id., 12:18-25.) Craffey produced the Craffey Appraisal as part of his engagement to appraise the Property. (Id., 13:5-21; Plaintiff’s Exh. 1.) In preparing the Craffey Appraisal, Craffey conducted two inspections of the Property, reviewed assessor’s and other public records, and market data. (Id., 13:22-17:18.)

In his appraisal of the Property, Craffey selected the sales comparison approach. (Id., 23:13-15.) As part of the sales comparison approach, Craffey determined that the highest and best use of the Property was continued use as a school because it would generate the highest price from potential buyers. (Id., 23:16-25:7.) Adaptive use to a multifamily residential property was not the highest and best use because the Property presented several attributes that reduce the feasibility of the Property for such use, such as the long, wide hallways, which would restrict the size of residential units. (Id.) Additionally, Craffey reviewed sales of other school properties purchased for adaptive and school use, conducted interviews with brokers, analyzed the potential market for residential use, and spoke with at least two parties interested in purchasing the Property for continued school use. (Id., 25:20-26:5.)

To value the Property, consistent with the highest and best use as a school, Craffey selected four comparable sales. (Id., 26:16-20; Plaintiff’s Exh. 1, p.28.) All of these Properties were school facilities that were purchased for continued use as a school. (Oct. 28 Tran., 38:4-13.) Because the highest and best use of the Property was determined to be continued use as a school, the

¹ Cited excerpts of the Oct. 28 Tran. are attached hereto as **Exhibit A**.

comparable sales had to be sold to buyers who intended to use those properties as schools; otherwise, the result would be undervaluing the Property. (Id., 38:14-39:3) The first comparable was the Paier College of Art, which was a multi-building complex in Hamden that was purchased for continued use as a school. (Oct. 28 Tran., 27:8-15.) Craffey selected it because it was purchased for continued use as a school (the highest and best use of the Property), it had a similar size and location as the Property, it had similar function and utility characteristics, and a significant portion of the space was below grade, as with the Property. (Id.) The second comparable sale selected by Craffey was the Learn Academy, located in New London, Connecticut. (Plaintiff's Exh. 1, p.28.) The Learn Academy was a former school and synagogue, which was purchased for school use. (Oct. 28 Tran., 28:20-29:3.) Additionally, the Learn Academy had significant below-grade area and was similar in size to the Property. (Id.) The third comparable was the Montessori School of Greater Hartford, located in West Hartford, Connecticut. (Id., 29:27-30:13; Plaintiff's Exh. 1, p.28.) This property was sold for continued use as a school and had a significant amount of below-grade area. (Oct. 28 Tran., 29:27-30:13.) The last comparable sale that Craffey used was the Museum Academy in Bloomfield, Connecticut. (Id., 31:1-14; Plaintiff's Exh. 1, p.28.) This property was, like the other comparable sales, purchased for use as a school. (Oct. 28 Tran., 31:15-32:1.) Even though the property was torn down after the sale, at the time of the sale the buyer intended to use the existing building as a school. (Id.)

Craffey did not use the sale of the Saint Brendan's Parish, 435 Whalley Avenue, New Haven, Connecticut ("St. Brendan's") or The Sacred Heart Saint Peter campus, located at 200 Columbus Avenue, Hartford, Connecticut ("St. Peter") as comparable sales. (Plaintiff's Exh. 1, pp. 42-43.) The St. Brendan's sale was not used due to the fact it was not directly comparable to the Property because "the seller was atypically motivated" and the buyer only planned to use a

portion of the multi-building property as a day school. (Id.; Oct. 28 Tran., 37:9-19.) The St. Peter's sale was not used either because it was sold to the current lessee, who had a below-market lease, and therefore, the sale did not represent the market value of that property. (Plaintiff's Exhibit 1, pp. 42-42; Oct. 28. Tran., 37:19-26.) In addition, the Saint Michael School in Wooster Square, New Haven, Connecticut was not used as a comparable sale because it was not purchased for continued use as a school, and therefore, was inconsistent with the highest and best use of the Property. (Oct. 28 Tran., 66:5-14.)

The comparable sales were then compared to the Property using price per square foot and making adjustments based on the differences between the properties and the conditions of sale. (Id., 33:6-22.) Craffey created a comparable sales adjustment grid, which is a summary of how each of the comparable sales related to the Property. (Id., 32:27-34:1; Plaintiff's Exh. 1, p.41.) For example, there was an adjustment of twenty-five percent due to the conditions of sale regarding the Paier College of Art based upon the fact that due to the circumstances of the sale, the buyer got a "really good deal." (Oct. 28 Tran., 34:2-27.) As another example, Craffey applied negative twenty-five percent adjustment to the Learn Academy property because it was newer and in significantly better condition than the Property. (Id., 35:3-16.) Craffey then used those adjusted values in order to arrive at a price range per square foot and a value range for the Property, and the median of those values to arrive at a market valuation. (Id., 35:19-36:24; Plaintiff's Exh. 1, p.42.) Craffey opined, within a reasonable degree of professional certainty that the market value of the Property was \$960,000.00. (Oct. 28 Tran., 36:20-24.)

B. Testimony of Defendant's Appraiser and Appraisal

Defendant's appraiser, Patrick J. Wellspeak ("Wellspeak"), testified regarding the appraisal prepared by his firm Wellspeak Dugan & Kane, LLC (the "Wellspeak Appraisal"). The

Wellspeak Appraisal stated a far lower value for the Property of \$390,000.00. (Defendant's Exh. A, p.47.) This was based upon a valuation of \$500,000.00 using the sales comparison approach and a deduction of \$110,000.00 based upon environmental conditions. (Id.) Wellspeak chose five comparable sales in order to reach his valuation of the Property. (Id., p.37; Transcript of December 9, 2019 Hearing ("Dec. 9 Tran."), 49:6-54:9.)²) Three of these were to be used by the buyers for conversion to apartments or multifamily use, one (St. Brendan's) was to be used for school, church, residential, and office purposes, and the final comparable was an office building that was to be converted to residential use. (Defendant's Exh. A, p.37.) He did not allocate any specific value to the St. Brendan's school building. (Dec. 9 Tran., 51:25-52:14.)

Wellspeak did not perform an environmental assessment of the Property, but rather, relied on a report from WSP USA, in which Derrick Jones was the licensed environmental professional (the "WSP Report"). (Id., 22:3-10.) Wellspeak only reviewed the WSP Report narrative, and not the hundreds of pages of appendices, and spoke with Jones about the WSP Report. (Id., 44:23-45:19.) This is because Wellspeak did not understand exactly what Jones did. (Id., 45:11-26.) According to Wellspeak's testimony, Jones identified four primary environmental issues: an underground storage tank, lead in the water, lead paint on the windows, and asbestos in the flooring. (Id., 22:17-22.) Wellspeak also recognized that Jones performed a Phase One Environmental Report, which is the lowest form of environmental due diligence, which does not include physical testing or sampling. (Id., 56:26-57:20.)

Wellspeak did not independently verify that there were previous underground oil tanks that were removed, and he did not independently verify that the current tank needed replacing. (Id., 42:2-26.) He also testified that he did not believe that Jones did any ground testing of the oil tank.

² Cited excerpts of the Dec. 9 Tran. are attached hereto as **Exhibit B**.

(Id.) With regard to asbestos in the mastic and the floor tiles, Wellspeak testified that he did not know how many samples Jones took of tiles and mastic, and that he did not independently verify that any of the tiles or mastic contained asbestos. (Id., 42:27-43:21.) Wellspeak also did not conduct an independent inspection of lead contamination in the water supply or in the windows. (Id., 45:27-46:8.) He did not recall how many windows Jones tested for lead paint, but believed “it was a fairly small sample.” (Id.) He admitted that he had no way of knowing whether one window was impacted or all of them. (Id., 46:9-47:4.) Wellspeak also did not do an independent analysis of the HVAC system at the Property, other than observing the boiler, which he had no reason to believe did not function. (Id., 43:22-44:8.)

Wellspeak ultimately determined that the highest and best use of the Property was continued use as a school. (Id., 49:5-11; Defendant’s Exh. B, p.33.) However, he also hedged that by saying that if the highest and best use was not determined by the market to be as a school, the highest and best use would be for conversion to residential housing. (Dec. 9 Tran., 47:5- 49:14.) Despite finding that the highest and best use was as a school, Wellspeak took into account the lower-value option of residential development when he determined the value of the Property. (Id., 49:6-14.)

III. THE COURT SHOULD ADOPT THE VALUATION OF CRAFFEY

The Court should find that the value of the Property is \$960,000.00 based upon the Craffey Appraisal and the testimony of Craffey. The value set forth by Craffey is supported by the sales comparison approach based upon the comparable school sales chosen and analyzed by Craffey. Both appraisers ultimately agree that the highest and best use of the Property is continued use as a school, and Craffey selected comparable sales of schools that were to be used for continued use as schools, with proper adjustments, in line with the highest and best use of the Property.

The Wellspeak Appraisal dramatically undervalues the Property, a one-acre site with a multi-story school building located in New Haven, Connecticut. Wellspeak essentially hedges on the issue of the highest and best use of the Property. He testified and stated in his report that the highest and best use of the Property was as a school, but inexplicably, also stated that it could otherwise be sold for a conversion to residential use.

Q So the highest and best use is as a school unless it's not, right?

A Yeah.

(Dec. 9 Tran., 48:9-11.) He even incorporates this improper back-up best use into his valuation, essentially ignoring the highest and best use and lowering the valuation of the Property as a result. This multiple-use approach is similarly carried over to the comparable sales that Wellspeak chose for the sales comparison approach. Only one of the properties that he used was a school that was sold, in part, for school use. The others were either schools sold for residential conversion, or in one case, an office building converted to residential use. These comparable sales simply do not reflect the highest and best use of selling the Property for continued school use. Therefore, Wellspeak's comparable sales analysis is suspect, at best.

In addition, Wellspeak relies upon the WSP Report in order to arbitrarily decrease the valuation of the Property by \$110,000.00. Wellspeak repeatedly testified that he did not independently verify the work done by Jones, nor in fact, did he know the extent of the testing done by Jones to reach his conclusions or fully understand what Jones did. Moreover, Jones never was called to testify by Defendant, nor was the WSP Report entered into evidence. While an expert may give an opinion based on sources that are not admissible if they are of a type that experts in the same field rely upon; E.D. Prescott, Tait's Handbook of Conn. Evid., § 7.7.4 (6th ed. 2019); that does not mean that the Court needs to give such opinions any weight.

The acceptance or rejection of the opinions of expert witnesses is a matter peculiarly within the province of the trier of fact and its determinations will be accorded great deference by this court. . . . The credibility and the weight of expert testimony is judged by the same standard [as that used to evaluate lay witness testimony], and the trial court is privileged to adopt whatever testimony [it] reasonably believes to be credible. . . .

Lapointe v. Comm'r of Corr., 316 Conn. 225, 383 (2015). Here, the Court should not give any weight to Wellspeak's use of the WSP Report to deduct \$110,000.00 from the value of the Property. By his own testimony, Wellspeak admitted that he did not fully understand what Jones did and that he did not know the scope of the testing done by Jones, including how many samples of tile and window paint Jones used. Such blind reliance on the WSP Report makes the deduction for environmental conditions speculative and incredible. Defendant was free to call Jones as a witness to support its claim that there were potential environmental issues with the Property, but he chose not to do so. Rather, Defendant chose to put the WSP Report beyond any potential cross-examination by having Wellspeak rely upon it.

Based on the evidence submitted at the Hearing, including the testimony of the parties' expert witnesses, it is clear that the valuation of Craffey should be adopted by the Court. Therefore, Plaintiff respectfully requests that the Court find the value of the Property to be \$960,000.00.

IV. THE COURT SHOULD NOT PERMIT THE SUBSTITUTION OF A BOND AND IT SHOULD GRANT THE MOTION FOR JUDGMENT

Through the Motion to Substitute and the Foreclosure Objection, Defendant attempts to have the Court substitute a "cash bond for the Property in the amount of the fair market value of the Property[.]" (Motion to Substitute, p.3; Foreclosure Objection, p.3.) Defendant's requests for relief raise several significant issues regarding the sufficiency of the security that Plaintiff would receive in return for the Judgment Lien. For example, the nature and particulars of the "cash bond" sought by Defendant are completely unclear, and it is not even certain whether Defendant attempts

to use the substitution of a “bond with surety” or a lien on “other property” under Conn. Gen. Stat. § 52-380e.

The Motion to Substitute and the Foreclosure Objection lack any specificity regarding the “cash bond” that Defendant seeks to substitute for the Judgment Lien, and Defendant’s proposal is strikingly lacking in any description of the bond. A bond is “[a] written promise to pay money or do some act if certain circumstances occur or a certain time elapses[.]” Blacks Law Dictionary 169 (7th ed. 1999). “The distinguishing feature of a bond is that it is an obligation to pay a fixed sum of money, at a definite time, with a stated interest. . . .” Id. (quoting 1 Silvester E. Quindry, Bonds & Bondholders Rights and Remedies § 2, at 3-4 (1934)). A surety is “[a] person who is primarily liable for the payment of another’s debt or the performance of another’s obligation.” Id., 1455.

More importantly, Defendant completely failed to introduce evidence at the Hearing with regard to the bond. Among other things, Defendant does not offer any evidence that shows the amount of the bond or Defendant’s ability to obtain one, explains the form of the bond and provides a copy, identifies the surety, and explains how and by whom the rest of the bond will be held and upon what conditions it would be released given the pending foreclosure action.

Plaintiff, therefore, requests that the Court deny any request by Defendant for substitution of a bond for the Judgment Lien because Defendant has completely failed to provide the Court and Plaintiff with any information whatsoever to determine the sufficiency of the proposed substitution of collateral. Therefore, the Court should grant the Motion for Judgment in this matter.

V. CONCLUSION

WHEREFORE, Plaintiff respectfully requests that the Court enter an order (i) finding that the value of the Property is \$960,000.00; (ii) denying Defendant's requests to substitute the Judgment Lien for a bond or other property, (iii) entering a judgment of strict foreclosure; and (iv) granting such other and further relief as justice requires.

THE PLAINTIFF
ELIYAHU MIRLIS

By: /s/ John L. Cesaroni
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CERTIFICATION OF SERVICE

This is to certify that service of copies of this Plaintiff's Post-Hearing Brief and the Exhibits thereto were made via electronic mail on the following appearing defendants and counsel of record:

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Date: January 27, 2020

/s/ John L. Cesaroni
John L. Cesaroni

EXHIBIT A

NO: NNH CV 17 6072389 S : SUPERIOR COURT
ELIYAHU MIRLIS : JUDICIAL DISTRICT
OF NEW HAVEN
v. : AT NEW HAVEN, CONNECTICUT
YESHIVA OF NEW HAVEN, INC. : OCTOBER 28, 2019
FKA THE GAN, INC. FKA T.

BEFORE THE HONORABLE CLAUDIA BAIO, JUDGE

A P P E A R A N C E S :

Representing the Plaintiff:

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Recorded By:
Sheila Demetro

Transcribed By:
Sheila Demetro
Court Recording Monitor
235 Church Street
New Haven, CT

1 work in that case?

2 A I did.

3 Q And were you qualified as an expert witness in the
4 field of real estate appraisal in that case?

5 A I was.

6 Q Okay.

7 ATTY. CESARONI: Your Honor, at this point
8 I'd - I'd move to have Mr. Craffey admitted as an
9 expert in the field of real estate valuation.

10 THE COURT: Counsel?

11 ATTY. SKLARZ: No, objection.

12 THE COURT: All right.

13 ATTY. CESARONI: Thank you.

14 BY ATTY. CESARONI:

15 Q Were you retained by the plaintiff in this matter,
16 sir?

17 A I was.

18 Q Okay. And what were you retained to do?

19 A I was retained to appraise the fee simple estate of
20 the property at 765 Elm Street.

21 Q And what type of property is the property at 765 Elm
22 Street?

23 A It's a school facility.

24 Q Is it a single building or multiple buildings?

25 A It's a single building.

26 Q Okay. Does it - was it - do you know what it's
27 currently being used for?

1 A It's currently owner occupied as the Yeshiva of New
2 Haven used in a significantly diminished capacity due to the
3 legal issues of the owner.

4 Q And is it your - sorry.

5 And as part of the - your engagement, did you produce
6 it - produce a report in this case?

7 A I did.

8 Q Okay.

9 ATTY. CESARONI: If I may approach, your
10 Honor?

11 THE COURT: Yes.

12 BY ATTY. CESARONI:

13 Q Mr. Craffey, I - I've just handed you what's been
14 marked as Plaintiff's Exhibit 1. And if you could look at
15 that and just tell me whether or not you recognize that?

16 A I do.

17 Q Okay. And what do you recognize that to be?

18 A This is the appraisal report that I produced, and it
19 was also signed by Patrick Lemp, MAI, who is the, you know,
20 proprietor of Italia & Lemp, Inc. And this involves the
21 appraisal of 765 Elm - Elm Street, New Haven.

22 Q Okay. And as part of your work in appraising the
23 property, did you inspect it?

24 A I did. I inspected it twice. I - first in, I
25 believe, March of 2018 and then most recently, May 2nd,
26 2019.

27 Q And what did you do as part of your inspection?

1 A I surveyed the neighborhood. I inspected the
2 exterior. I walked through the interior. Examined the
3 interior of all rooms that were available. And took - took
4 a number of photos.

5 Q And what - generally, what - what is the purpose of
6 performing an inspection of a property that you're
7 appraising?

8 A To gather information available from visible
9 inspection that may impact valuation.

10 Q And did you - did you form an opinion as to the
11 general condition of the property?

12 A I did. The general condition is below average.

13 Q Okay. And can you describe what you mean by below
14 average?

15 A For a school property of that vintage, its
16 characteristics showed wear and tear and lack of substantial
17 upgrades to commercial - to modern standards.

18 Q Okay. And - and you said vintage. About - about how
19 old is the building?

20 A Circa 1900 it was -

21 Q Well, it - it's -

22 ATTY. SKLARZ: Your Honor. your Honor, I don't
23 have a problem with Attorney Cesaroni asking
24 questions about the report, but he - I - I don't
25 think it's proper for the witness to just be
26 reading from his report as basically a refreshing
27 of recollection while it's sitting in front of

1 him, so.

2 THE COURT: Counsel.

3 ATTY. CESARONI: We - we can - I'll direct
4 him to the report if he doesn't recall, your
5 Honor.

6 THE COURT: Okay. Fair enough.

7 Objection then is to that extent - well, are
8 you withdrawing the question and -

9 ATTY. CESARONI: I'll - I'll withdraw the
10 question.

11 THE COURT: Okay. So there needn't be - no
12 ruling on that.

13 BY ATTY. CESARONI:

14 Q Do you remember when the - the - the improvements on
15 the property were built?

16 A It was Circa 1900 is my recollection.

17 Q Okay. And did you have any concerns about the
18 integrity of the - of the structure of the building on the -
19 on the property?

20 A I did not.

21 Q Did you inspect the HVAC systems at the property?

22 A I inspected the boiler room and the heating elements,
23 but I did not inspect any further than that.

24 Q Okay. What was your impression of the HVAC system
25 based on your inspection?

26 A It appeared to be antiquated. It's an oil fired
27 system. And some of the classrooms on the ground floor had

1 delivery devices while others did not, delivery elements.

2 And there was a somewhat unusual system whereby the heated -
3 the heat from a heated room would be blown into the adjacent
4 unheated room through a system of openings over the doorways
5 and fans.

6 Q Okay. And - and what were the conditions of the - of
7 the windows?

8 A Windows were wood double hung and there were plastic
9 sheets on the inside of the windows affixed to limit drafts
10 I imagine and provide a certain level of thermal resistance.

11 Q Okay. Did you evaluate the plumbing system at all?

12 A I did not.

13 Q Okay. Did you do - did you research any data as part
14 of preparing your appraisal report?

15 A I did. I reviewed the assessor's records and
16 performed a search of the records regarding license and -
17 and inspections of the property to see if there had been any
18 recent upgrades to the roof or the HVAC system.

19 Q And what did - what did you learn from your review of
20 those records?

21 A There were no records of - of recent upgrades to the
22 property. I - I learned the - I was able to ascertain the
23 gross building area for the property through the assessor's
24 records, was also able to determine what percentage of that
25 area was - was below grade. There's a three-story building
26 with the - the ground floor is an English style basement so
27 that there's significant natural light instead of the little

1 slits that you have in most basements in Connecticut, you
2 have significant windows, and portions of the ground floor,
3 the - rather the basement area were finished, and those were
4 included in my gross building area estimate.

5 Q And did you locate any market data as part of
6 preparing your appraisal report?

7 A I did.

8 Q Okay. What - what did you look at?

9 A I looked at a variety of sources. In terms of the
10 general locational attributes, I looked at demographic
11 information, population, employment. I looked at some
12 information regarding the transportation system, including
13 nearby traffic counts on Whalley Avenue. And then in terms
14 of market transactions, I reviewed a number of data bases
15 including our own national data base through Valbridge
16 Property Advisors, but also source of leads, CoStar, and
17 locally in Connecticut ConCom, among other - among other
18 things.

19 Q And - so based on your - your review and your
20 inspection, can you describe the general neighborhood in
21 which the property is located?

22 A Yes. The property is located in the Edgewood
23 neighborhood which is located more than a mile west of
24 downtown. It's bounded to the north by Whalley Avenue,
25 which is a mixed use corridor. There's professional
26 offices, medical offices. There's a pharmacy. There's a
27 Wells Fargo Bank to the North. And then the immediate

1 credible.

2 Q So did you - did you use the income capitalization
3 approach here?

4 A I did not.

5 Q Okay. And last, could you explain the - the sales
6 comparison approach?

7 A The sales comparison approach is fairly intuitive.
8 Recent sales of similar properties are researched and a unit
9 of comparison is employed. And those sales are compared to
10 the subject, after making adjustments for differences and
11 things like financing, conditions of sale, market
12 conditions, location, and physical attributes.

13 Q And did you use the - did you use the sales
14 comparison approach here?

15 A I did.

16 Q And as part of your use of the sales comparison
17 approach, did you conclude that - what the highest and best
18 use of the subject property is?

19 A Yes. Per any appraisal report, concluding highest
20 and best use informs the valuation. Whether you use any of
21 the approaches to value. So the - we - what we call in the
22 industry, the fun after the report, the - the site
23 description, the building description, market area, supply
24 and demand analysis, those things, inform the highest and
25 best use analysis, which look at what's legally permissible,
26 what's physically possible, what's financially feasible, and
27 what's maximally productive. And looking at this property,

1 it's pretty clear that you can get the highest price if it
2 were - if you could find a buyer that would use it for a
3 school use as opposed to an alternate use where you'd either
4 demolish the improvements and sell it as vacant land or try
5 to perform an adaptive reuse of the improvements for a - for
6 an alternate use.

7 Q Okay. And did you consider other uses of the
8 property other than as a - a school?

9 A I did. I did. I considered that it might be purchased
10 for adaptive reuse for multi-family.

11 Q And why did you - why didn't you conclude that that
12 was the highest and best use for the property?

13 A There was a number of attributes of the subject that
14 render problematic. A - a clear determination of financial
15 feasibility with respect to multi-family, adaptive reuse.

16 As you enter the property, you walk up steps and the
17 ground floor, the - where the second floor of the three-
18 story building is a long and wide hallway, and that is used
19 for - historically for gathering. There's a stage at the
20 end so assembly and also for, from what I understand,
21 religious services. Because it takes up such a - a wide
22 area, it's - it's - and I don't know if the - the walls on
23 either side of that long hallway are loadbearing walls or
24 not, the determination of how much common area there would
25 be at the property and how much of the area would be
26 available for future living areas really is difficult to
27 determine.

1 There is a pretty robust market for adaptive reuse
2 properties in the general New Haven area, in New Haven in
3 particular. And I looked at other properties that were
4 purchased for that use. And my determination was that while
5 there might be a market for that, it's unlikely that buyers
6 for that property use would - would pay a higher price than
7 they would for school use.

8 Q Okay. And did you make an analysis of the highest
9 and best use both as improved and as - as vacant?

10 A I did.

11 Q And what is meant by - by vacant in this - in this
12 situation?

13 A It's required through USPAP for appraisers to
14 determine what the highest and best use is of the land as
15 though it's unimproved and available for development.

16 Q Okay. And that's why you did an analysis of both the
17 - the property unimproved as well as with the - the school
18 building on it?

19 A Yes.

20 Q Okay. What - what did you do as part of your
21 investigation into the highest and best use of the - of the
22 property?

23 A I reviewed sales of school properties purchased for
24 school use and for reviewed sales of properties purchased
25 for adaptive reuse. I conducted interviews with - with
26 brokers. I analyzed the - the area in terms of apartment
27 rents and what I thought would be the desirability of the

1 neighborhood for - for apartment use and also for school
2 use. And - and in part of that process, I spoke to at least
3 two interested parties who are - who had expressed interest
4 in possibly purchasing the property at a future date for
5 continued school use.

6 Q Okay. And so did you, as part of your comparative
7 sale analysis, did you - did you select comparable sales to
8 use as part of your appraisal report?

9 A I did.

10 Q Okay. And do you recall what those were?

11 A I do. I - if you don't mind, I could refer to the
12 report?

13 Q Well - sure. Actually, if I could refer you to page
14 twenty-eight of Exhibit 1.

15 A Okay.

16 Q And on - on page twenty-eight of Exhibit 1, there is
17 a chart at the bottom of the page. Does that chart
18 represent the comparative sales, comparable sales that you
19 used in - in this case?

20 A Yes.

21 Q Okay. So for the Paier College of Art, could you
22 briefly describe that property?

23 A Yes. This is located in Hamden in a mixed-used
24 neighborhood. It's a multi-building complex that was
25 developed over the course of decades for the owner occupancy
26 of the - the Paier College. It sold in early 19 - I'm
27 sorry, in early 2019 along with adjacent residential

1 properties that were also owned by both the - they were
2 owned by the seller, but they weren't used in conjunction
3 with the school.

4 The total sale price was a million three fifty, and
5 that was adjusted three hundred and fifty thousand dollars
6 down for the inclusion of the adjacent residential
7 properties.

8 Q Okay. And why did you choose this particular
9 comparable sale?

10 A It was purchased for school use, which is consistent
11 with the highest and best use of the subject. It's also has
12 - it's similar in terms of size and location as the subject
13 and has similar function and utility characteristics and that a
14 significant portion of the gross building area was below
15 grade as is the subject.

16 Q Okay. And were the conditions of the sale of the
17 Paier College of Art typical?

18 A No, they were atypical. The property sold as part of
19 a going concern, although I didn't ascribe any value to the
20 business. The buyer had approached the sellers at a time
21 when enrollment had been significantly diminished. They
22 were nearing retirement, the sellers, and the buyer is an
23 experienced school operator and - and real estate. He's
24 real estate savvy. He's - he and his partner are associated
25 with the Stone Academy and the Goodwin College, operate a
26 number of schools throughout Connecticut, and they targeted
27 this school as - as a good opportunity for them.

1 So the - as part of the - the sale process, he agreed
2 to come on for a year and stabilize operations of the
3 school, make some upgrades. And then he purchased the - the
4 property and the - and the school at the same time.

5 Q Okay. And had you previously performed appraisal
6 work with regard to the Paier College of Art?

7 A Several months before it sold, I - I appraised the
8 property.

9 Q Who did you - who did you appraise it for?

10 A I appraised it for the lending institution involved
11 in the - that provided financing for the sale.

12 Q And as - as part of that, did you perform an
13 inspection of that property?

14 A I did.

15 Q Okay. And it was - it was purchased to be used as a
16 - was it - was it purchased to be used as a - as a school
17 going forward?

18 A It was. It was purchased for a continued use as the
19 - as the same school.

20 Q And then could you describe generally the - the Learn
21 Academy property, which is the - the next comparable sale?

22 A Yes. That's located in New London, Connecticut in a
23 mixed-use area near Mitchell College. It is a former school
24 and synagogue purchased for school use. They're - the buyer
25 was going to perform significant renovations after the -
26 after the sale. The property was openly marketed through
27 Susan Howard of US Properties. And it's also similar in

1 size to the subject and also included significant area below
2 grade, like the subject. This closed in August of 2017 for
3 one point nine million.

4 Q Okay. And were the conditions of this sale typical?

5 A They were.

6 Q And do you know whether it was purchased for
7 continued use as a school?

8 A It was purchased for school use, yes, and they were
9 converting the synagogue portion to a large classroom as I
10 understood it.

11 Q Okay. Do you know if this property was, in fact,
12 used as - as a school after the - after the sale?

13 A Yes. I believe it was. Yes.

14 Q Do you know - well, let me see.

15 Do you remember whether the - actually, I'll - I'll -
16 if I could strike that, your Honor.

17 Okay. Do you remember whether or not that property
18 had been torn down after the sale?

19 ATTY. SKLARZ: Objection. Leading. I -

20 THE COURT: It is leading.

21 ATTY. CESARONI: I'm just trying - I'll -

22 ATTY. SKLARZ: I'm not trying to be
23 difficult. I let a lot of them go.

24 THE COURT: I know.

25 ATTY. CESARONI: Okay.

26 BY ATTY. CESARONI:

27 Q The next - the next property was the Montessori

1 School of Greater Hartford. Could you describe that
2 property?

3 A Yes. This - located in West Hartford. It was part
4 of the campus for - of the School of the Deaf. And the owner
5 of the property, the seller, had developed more modern
6 classroom facilities near the front of the school. This was
7 a - divided and sold off for continued use of as a school to
8 an existing tenant. It required significant renovations
9 after the sale. Again, the significant portion of the - of
10 the building area was below grade. In this case it had been
11 - had been flooded, so there was significant damage that
12 needed to be repaired after the sale. It sold for a million
13 four fifty in October of 2014.

14 Q And were the - were the conditions of this sale also
15 typical?

16 A They were typical. It was openly marketed, but it did
17 sell to the existing tenant. Yeah.

18 Q And what - and we've used the word typical, what does
19 typical mean?

20 A Typical means that it sold for market value. And if
21 you - you can refer to the definition of market value, but
22 generally well-informed parties on both sides unmotivated by
23 unusual considerations, not being related by having an
24 interest whether it's familial or some other relationship
25 that would provide - would indicate a likelihood of an
26 either depressed sale or a sale that's - I mean, it's a sale
27 price below market or above market.

1 Q And can you - can you last describe the Museum
2 Academy, the - the final comparable sale?

3 A Yes. This is located in Bloomfield, Connecticut,
4 kind of an odd location, in a residential area, but it had
5 been occupied by the Museum Academy which is a CREC school,
6 and they were using it on a temporary basis. After the
7 school had been used by the Town of Bloomfield as a - a -
8 like a screen school, so while they were renovating one
9 school, the school would - would use this property and then
10 another school - while another school. They did this for
11 several schools in town. And they were done with that
12 process, they didn't need it anymore. First they rented it
13 to Museum Academy, then they sold it through a process that
14 involved a CRDA and sold for the appraised value.

15 Q Okay. And why did you choose this particular
16 property as a comparable sale?

17 A Well, again, it was purchased for school use. And
18 this was - this is a bit unusual in that the - at the time
19 of sale, the time of the meeting of the minds, the buyer
20 intended to purchase the property and gut it and perform
21 significant renovations.

22 After the transfer they decided, based on
23 consultation with their architect and looking at their
24 budget, to demolish the building and then start from scratch
25 on the same property, but the sale summarized, represents
26 the sale of an existing school that's older and generally
27 similar characteristics as the subject. And again, it was

1 purchased for school use, which is important.

2 Q Okay. And did you perform an - an appraisal on this
3 property prior to your engagement in - - in this matter?

4 A I did. I appraised the property prior to the sale in
5 - in June 2014.

6 Q Okay. Now, could you describe how you took the
7 comparable sales and used those to devalue the property?

8 A I start by using a unit of comparison. In this case
9 the sale price per square foot of gross building area. And
10 so each of the sale prices that I discussed is divided by
11 the gross building area to come up with a price per square
12 foot. And then I adjusted the sales based on differences
13 and conditions of sales as we discussed with the - the Paier
14 College that required adjustment due to the atypical
15 conditions. Financing, I don't believe any of the - the
16 sales required adjustment for financing. And then
17 differences in functioning utility associated mostly with
18 multi-building or below-grade space versus single story
19 space.

20 Sale four was the only single story building and that
21 required a - a negative adjustment in comparison to the
22 subject for difference in function utility.

23 Q All right. So if you would take a look at page forty-
24 one of - of Exhibit 1. And just let me know when you get
25 there.

26 A Okay.

27 Q All right. Could you describe generally what - what

1 this is on - on page forty-one of your report?

2 A This is a comparable sales adjustment grid which
3 summarizes each of the four sales in relation to the subject
4 and describes a process or quantifies the process that I
5 described recently in my testimony regarding differences in
6 transactional adjustments and then market conditions and
7 property adjustments, the transactional adjustments. If one
8 property was leased at a below-market rate or above-market
9 rate, if it was a leased fee estate, then I would make an
10 adjustment there.

11 All four properties sold in fee simple as to - as did
12 - as I'm valuing the subject was a fee simple estate. And
13 then differences in financing terms. None required
14 adjustments for differences in financing.

15 With respect to sale one, none required adjustments
16 for conditions of sale. And with respect to market
17 conditions adjustments, and this is an adjustment based on
18 comparing the market conditions as of the date of valuation
19 in relation to the valuation or the - when the - when the -
20 when each sale occurred. And in this case, the - the two
21 older sales were adjusted positive, in a positive way to
22 estimate difference - what - what - what those property
23 would have sold in 2019 versus when they did sell in 2014.

24 And then there's adjustments where necessary for
25 locational and physical characterizes. I didn't make any
26 adjustments for location, which isn't to say that all the
27 locations are the same, but that they weren't substantially

1 different to - to require adjustments.

2 Q Okay. So for sale number one, which is the - the
3 Paier College of Art, if you'd look on - on page forty-one
4 in the second column, across from where it says conditions
5 of sale. Do you see that?

6 A I do.

7 Q And then below that it - it says adjustment and
8 twenty-five percent.

9 A Um-hum.

10 Q Could you just explain that?

11 A Yeah. The - essentially, the buyer got a really good
12 deal. Like I said, he was very well informed as an operator
13 of schools and was knowledgeable of real estate. Whereas
14 the sellers were afraid, I think, my impression was, they
15 were nearing retirement, their school hadn't been doing
16 well. When the meeting of the minds met, they agreed to a
17 price for the properties, which essentially was the price of
18 the going concern and that they didn't think there was any
19 value to the - the business, the school business when they
20 sold it. I don't think they were making money; I think they
21 were losing money. And they were glad to find a buyer who
22 approached them. So I - my analysis determined that a
23 positive adjustment for conditions of sale was necessary for
24 that transaction.

25 Q And does the positive adjustment mean you're
26 increasing or decreasing the price per square foot?

27 A It's an increase.

1 Q All right.

2 A Yes.

3 Q And if you look under sale two, the sale two column
4 across from where it says age and condition on the left.

5 A Um-hum.

6 Q There is an - an adjustment that says negative
7 twenty-five percent. Can you describe that, the reason for
8 that?

9 A This was the - the Learn Academy property in New
10 London. And this was of newer vintage, built in 1970 in an
11 average condition. My - based on my discussions with the
12 - the selling broker, the property was actually in - in - in
13 significantly better - had significantly better age,
14 condition, characteristics, relative to the subject. And so
15 in order to compare that sale to the subject, I applied a
16 negative adjustment.

17 Q And then you made similar adjustments as - well, I'll
18 - I'll withdraw that.

19 If you would turn to the - to page forty-two, there
20 is a table at the top that says improved sales statistics.
21 Could you describe what you - what you've done in that
22 table?

23 A This essentially summarizes what was printed out on
24 the adjustment grid. We chose the minimum and maximum sale
25 price on a unit basis from thirty-six fifty to fifty-seven
26 twenty, this is before adjustments, with a median of forty-
27 six oh eight and an average of forty-six point four seven

1 per square foot. And then in the right column is an
2 adjusted - the adjusted metrics, the minimum and maximum, is
3 - is lower. Instead of thirty-six to fifty-seven, it's
4 thirty-one to - approximately thirty-eight. And then the
5 median, thirty-four fifty-seven and the - the average of
6 thirty-four sixty a square foot.

7 Q Okay. And so how did you use these adjusted values
8 to arrive at a value for the - the subject property?

9 A I indicated that a reasonable range of - of prices of
10 unit value between thirty-one forty-nine and thirty-seven
11 seventy-five as - as indicated on the adjustment grid
12 between the minimum and maximum would yield a market value
13 between eight seventy-six forty-two and one million forty-
14 three eight twenty-seven. And then I reconciled that the -
15 the median adjusted price per square foot of thirty-four
16 fifty-seven, which is nine hundred fifty-five thousand eight
17 forty-eight rounded to nine hundred sixty thousand dollars.

18 Q And -

19 A Which is the market value I concluded.

20 Q Within a - within a reasonable degree of - of
21 professional certainty, did you reach an opinion as to the
22 fair market value of the property?

23 A I did. The market value appraised is nine hundred
24 sixty thousand dollars as of my inspection date.

25 Q Okay. And as far as the - the adjustments that you -
26 you made in - in the -the table on - on page forty-one, is
27 that based on any objective data?

1 A They're fair - they're all fairly subjective
2 adjustments. I don't think any of the adjustments are based
3 on any published reports or quantifiable statistics that are
4 available in the market based on my professional experience
5 and discretion.

6 Q And did you consider any other sales as part of your
7 - as part of constructing your appraisal report?

8 A Yes, as - as indicated on page forty-two, there's
9 additional market data considered. That included the former
10 St. Brendan's campus transaction that I discussed earlier in
11 my testimony and I touched upon in the market area section
12 of the report.

13 And as I indicate in the verbiage, I - I determined
14 that this property wasn't suitable for direct comparison
15 because of some extenuating circumstances. The property had
16 been - the - the seller was atypically motivated based on
17 reports from knowledgeable parties, and the buyer only used
18 a portion of the property day-school use, so it really
19 wasn't a direct comparison. And then there was another
20 property, another former church property, the Sacred Heart
21 St. Peter campus located at 200 Columbus Avenue that I also
22 considered, and that was also - didn't - did not make the
23 cut as a direct comparison. The property sold with a below
24 market lease in place and the sale price did not represent a
25 market value based - based on conversations with a broker
26 and other interested parties.

27 Q And - and so just generally speaking, what - what did

1 you - did you apply criteria to select comparable sales in -
2 in this - as part of your appraisal?

3 A I did.

4 Q And what type of criteria did you apply?

5 A The comparable sales pertinent for analysis need to
6 be consistent with the highest and best use of the subject.
7 So in this case, the highest and best use is for continued
8 use as a school, and so the properties that sold also had to
9 have buyers that intended for continued school use. I
10 limited my geographical area to the State of Connecticut,
11 although I did look beyond the State and - and I - I - I did
12 limit them to - to school properties less than a hundred
13 thousand square feet as well.

14 Q And you even - and - so why did you choose just
15 school properties that were limited to school use?

16 A Because properties purchased for other uses wouldn't
17 be consistent with the highest and best use of the subject.

18 Essentially, if the subject were purchased for school use,
19 which I think would - would yield the highest price, if you
20 used properties that were purchased for a lesser use, you're
21 undervaluing the property, you're over valuing the property.

22 And you wouldn't be overvaluing it because if - if there
23 were another use, now you consider that like conversion to
24 multi-family use could be the highest and best use. If that
25 had yielded a price greater than thirty-five dollars per
26 square foot, I would have used sales of properties purchased
27 for multi-family conversion, but because that wasn't the

1 case, I used sales of schools. And so the highest and best
2 use and the sales comparison approach have to be consistent
3 with respect to highest and best use.

4 Q And could you - and what's an - an extraordinary
5 assumption?

6 A Extraordinary assumption is a - is something that
7 could be true, but you don't know it to be true, so you
8 assume for the - for the purposes of the appraisal
9 assignment that it is not true.

10 Q Okay. And did you make an extraordinary assumption
11 in this case?

12 A I did. The - the appraisal is - is made based on the
13 extraordinary assumption that hazardous substances do not
14 exist at the subject.

15 Q And do you know whether or not a phase one
16 environmental report has been conducted by - by an expert
17 for the defendant in this case?

18 A I am aware that a phase one environmental survey was
19 conducted. I became aware of that after I had performed my
20 appraisal.

21 Q Okay. And - and have you reviewed that report?

22 A Not extensively. I did read parts of it.

23 Q Okay. And does - does - does that report change your
24 conclusions as to the value of the property?

25 A No.

26 Q And why is that?

27 A Because my prop - my appraised value is made

1 irrespective of any environmental contamination. So the -
2 the conclusions of the report by environmental scientists or
3 engineers are not relevant to the - the market value I
4 appraised.

5 Q Okay.

6 ATTY. CESARONI: I don't have anything
7 further at this - at this time, your Honor.

8 THE COURT: All right. Cross examination,
9 Attorney Sklarz?

10 ATTY. SKLARZ: Your Honor, it's about 3:30.
11 Do you want to take the afternoon break or?

12 THE COURT: Sure. You want to take a recess.
13 We'll do a fifteen minute recess.

14 All right. Court will stand in recess. We'll
15 see you all in fifteen minutes.

16 (RECESS TAKEN.)

17 THE COURT: You came back a little earlier. I
18 was giving you your time.

19 All right. Are we ready to proceed with
20 cross examination?

21 ATTY. SKLARZ: Thank you, your Honor. Yes.

22 CROSS EXAMINATION BY ATTY. SKLARZ:

23 Q Good afternoon, Mr. Craffey.

24 A Good afternoon, Attorney Sklarz.

25 Q Craffey. I -

26 A Got it.

27 Q - one of these days I'll -

1 instance where there's atypical financing, the seller
2 provides financing at a low rate, that wouldn't be a - a
3 market value. The sale price wouldn't be equal to market
4 value in that case.

5 Q Okay. And did the St. Michael's School in Wooster
6 Square, did that - that sell for use as a school?

7 A It did not.

8 Q Okay. And why didn't you consider that as a - as a
9 comparable sale when you prepared your appraisal report?

10 A I considered it within the highest and best use
11 analysis, but because the buyer didn't purchase the property
12 for continued school use, it was inconsistent with the
13 highest and best use of the subject and therefore not
14 applicable.

15 Q And as to the Paier College of Art, is it - is it
16 part of an appraiser's job to sometimes allocate values
17 between different portions of a - of a property or
18 properties that are sold?

19 A It's - it's necessary in this case to - in analyzing
20 the sale, to do that. Yes. And it is, it's part of the
21 standard appraisal practices.

22 Q And how - and if you look at - if you look at page
23 forty-one of your report, which is the - the sales, the
24 comparable sales adjustment gird.

25 A Um-hum.

26 THE COURT: I'm sorry, counsel. Which page?

27 ATTY. CESARONI: It's page forty-one.

NO: NNH CV 17 6072389 S

: SUPERIOR COURT

ELIYAHU MIRLIS

: JUDICIAL DISTRICT
OF NEW HAVEN

v.

: AT NEW HAVEN, CONNECTICUT

YESHIVA OF NEW HAVEN, INC.
FKA THE GAN, INC. FKA T.

: OCTOBER 28, 2019

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of New Haven, New Haven, Connecticut, before the Honorable Claudia Baio, Judge, on the 28th day of October, 2019.

Dated this 31st day of December, 2019 in New Haven, Connecticut.



Sheila Demetro
Court Recording Monitor

EXHIBIT B

NO: NNH CV 17 6072389 s : SUPERIOR COURT
ELIYAHU MIRLIS : JUDICIAL DISTRICT
OF NEW HAVEN
v. : AT NEW HAVEN, CONNECTICUT
YESHIVA OF NEW HAVEN, INC. : DECEMBER 9, 2019
FKA THE GAN, INC. FKA T.

BEFORE THE HONORABLE CLAUDIA BAIO, JUDGE

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1 Q And you - when you say them, you mean the LEP?

2 A The LEP. Correct.

3 Q Okay. So how did - how did you address the
4 environmental concerns in - in this project?

5 A So I received a phase one report that was completed
6 by WSP USA. That was the firm. And Derrick Jones was the
7 LEP there. Upon receipt of his report, I read his text
8 conclusions, and then I actually asked you if I could have a
9 - if you could arrange a phone call with me because I had
10 questions for him.

11 Q And did - and did you converse with Mr. Jones?

12 A I did.

13 Q And following that conversation, you concluded - you
14 - you prepared your report. How did you - and so how did -
15 so what were the environmental issues that were raised by
16 Mr. Jones?

17 A So Mr. Jones identified four primary environmental
18 issues.

19 One was dealing with an underground storage tank. The
20 other was lead in the water for the drinking fountains. A
21 third was lead paint on the windows. And the fourth was
22 asbestos in the flooring.

23 Q And - and did you just adopt Mr. Jones' conclusions
24 and sort of plop them into your report?

25 A No.

26 Q How did you - how did you handle each of those
27 issues? Let's just start with the - the asbestos. How did

1 A I'm here.

2 Q Okay. And so on page twenty-five, it says - it says
3 under environmental issues that according to Derrick Jones
4 there an eight thousand gallon underground storage tank
5 currently at the site; is - is that correct?

6 A Correct.

7 Q And then there were also for - two former tanks, an
8 eight thousand gallon and a three thousand gallon tank,
9 correct?

10 A That were removed.

11 Q That - that were removed, correct?

12 A Yes.

13 Q Yes. You - you didn't inde - independently verify
14 the tanks were removed, did you?

15 A I did not.

16 Q And you didn't independently verify that the current
17 tank needs to be replaced, did you?

18 A I did not. I relied upon Mr. Jones.

19 Q And Mr. Jones didn't perform any testing that you
20 were aware of to - to see whether or not that tank actually
21 needed replacing, did he?

22 A It's my understanding he based it on the age of the
23 tank.

24 Q Okay. So he didn't do any ground testing or - or
25 anything like that?

26 A I don't believe that he did.

27 Q Okay. So if you turn to page twenty-seven of your

1 report, please.

2 Now, you testified that - that Mr. Jones made an
3 estimate to replace floor tiles, correct?

4 A To both abate and to put a new flooring surface.

5 Q Okay. And you - you don't know specifically what Mr.
6 Jones did to - to test for asbestos, do you?

7 A I don't. I think he - he knew the type of material
8 that the flooring was and so he - that's how he reached his
9 conclusion that it had asbestos in the flooring material
10 from the mastic.

11 Q So he - he tested floor tiles and also the mastic,
12 correct?

13 A Correct.

14 Q You don't know how many samples he - he took, do you?

15 A I do not.

16 Q So it could have been one or a hundred, right?

17 A I - I don't have the answer.

18 Q Okay. And - and you didn't do anything to
19 independently verify that any of the tiles or the - or the
20 mastic had contained any asbestos, did you?

21 A I did not.

22 Q So turning to the HVAC system, when you did an
23 inspection of the subject property, that was during the
24 summer, correct?

25 A That's correct.

26 Q So the - the heat wasn't on, right?

27 A That's correct.

1 Q And you didn't check to see whether or not the boiler
2 - the boiler was functioning, did you?

3 A No. I had no reason to believe it wasn't. I just
4 recognized the age of the boiler.

5 Q Okay. And you didn't do an independent, any
6 independent testing or evaluation of the HVAC system apart
7 from observing the boiler; is that correct?

8 A That's correct.

9 Q Okay. And then on page twenty-eight of your report,
10 if you look near the bottom under - next to construction
11 quality, it says below average. Do you see that?

12 A I do.

13 Q But that really should be average, correct?

14 A That's correct. I think we covered that in my
15 deposition that that was really more about condition than it
16 was of quality. I thought it should have been average
17 quality.

18 Q So the construction quality of the building is
19 average -

20 A Correct.

21 Q - quality?

22 A Yes.

23 Q Okay. Now, was there anything you did apart from
24 review Mr. Jones' environmental report or - or speak to Mr.
25 Jones in order to assess the environmental condition of - of
26 the subject property?

27 A No, those would be the only things that I did,

1 reviewed his report and then had conversations with him.

2 Q Okay. And Mr. - Mr. Jones' report had a narrative in
3 the beginning; isn't that right?

4 A That's correct.

5 Q And then it was followed by several appendices,
6 right?

7 A Correct.

8 Q And it was about five hundred pages or so of
9 appendices?

10 A It was a lot of pages.

11 Q But you didn't review the appendices separately, just
12 the narrative, right?

13 A No, I - I mean, quite candidly, it's beyond my level
14 of technical understanding. I did what I'm trained to do in
15 these instances which is, in my certification to say that we
16 relied on the significant professional assistance of someone
17 who does have that expertise, which was Mr. Jones, and have
18 the conversations with him to make sure I understood the
19 points he was making.

20 Q Okay. So you didn't - so you don't know - you don't
21 have the expertise to understand exactly what he did, right?

22 A No.

23 Q Okay. And you - you - so you're just relying upon,
24 you know, what he's telling you and what's in the report,
25 and - and that's it?

26 A Yes, because that's his expertise.

27 Q Okay. Did you do any type of independent inspection

1 of any lead contamination either in the water supply or in
2 the windows?

3 A I did not.

4 Q Okay. Do you know how many of the windows Mr. Jones
5 tested in - in evaluation whether or not there was lead
6 paint?

7 A I don't recall, but I believe it was a fairly small
8 sample.

9 Q Okay. And there are a number of windows in the
10 building, correct?

11 A Yes.

12 Q So if - if, for example, it turned out that windows
13 he didn't test didn't have lead paint, would that change
14 your deduction for environmental costs?

15 A Well, as I indicated earlier in my direct exam, I
16 only took a fraction of what Mr. Jones came up with. It was
17 the hundred and twenty-five dollars per window for removal
18 and then a ten thousand dollar disposal fee. If the number
19 of windows that were impacted was less, then the figure that
20 I came up with would come down.

21 Q And you have no way of knowing if it was one of the
22 windows that was impacted or all of them?

23 A I personally don't.

24 Q Do - based on your review of Mr. Jones' report, did
25 he know how many of the windows were impacted?

26 A I believe his assumption was that all of them were
27 impacted, but I don't believe that he tested each and every

1 one.

2 Q Okay. Just to - he just tested a small sample,
3 right?

4 A Correct.

5 Q Okay. So for the highest and best use of the
6 property, your ultimate conclusion was the highest and best
7 use of this property is continued use as a school building;
8 is that right?

9 A I said that - that - that it should be continued use
10 as a school, however, in that same paragraph, I said that if
11 there's no demonstrated demand for this use, the property
12 should be re-evaluated for use alternatives that would
13 primarily be residential oriented.

14 Q But ultimately you chose that the highest and best
15 use for this particular property was to be used as a school,
16 right?

17 A Again, I said that is his preferred option, but I do
18 have concerns over whether there will be demand for that
19 use, and so I did want to have a fallback position on that.

20 Q So are you saying you don't know if the highest and
21 best use is as a school or as - for example, conversion to
22 residential?

23 A Well, I think ultimately the market is going to tell
24 you that when you list the property for sale. I think all of
25 these properties that are of this age and condition, that
26 they get exposed to the market with a plethora of use
27 alternative that include continued use as a school or

1 conversion to residential. And I think the men or women who
2 list them for sale wait to see what the market is going to
3 tell them. And again, I think the easiest thing to do, the
4 thing that's going to require the least amount of capital
5 investment, would be for it to be continued use as a school,
6 but I do have concerns that there will be demand for that.
7 And I think that the only way you're going to know the
8 answer to that is when you test the market.

9 Q So the highest and best use is as a school unless
10 it's not, right?

11 A Yeah.

12 Q Okay. And you - you believe that there's a premium -
13 there would be a premium for someone who bought it as a
14 school, right?

15 A Versus an alternative use?

16 Q Well, let - let me ask this, would - generally
17 speaking, do you believe that the property would sell for
18 more as a school than it would as say a conversion to
19 residential hous - housing?

20 A If - if somebody wants to use it as a school, then -
21 then I do believe that.

22 Q Okay. But you also con - so you considered that it
23 would be a lower value that somebody would pay if they were
24 going to convert it to apartments, right?

25 A If the market determines that the highest and best
26 use is not a school, that inherently tells you that they're
27 paying more for it as a potential apartment conversion than

1 they're paying for it as a school.

2 I think that if there is demand for it as a school,
3 you'll probably get a higher number than you will if it's a
4 use conversion, but I just don't know that that demand is
5 going to be there.

6 Q Did you take that into account when you - you valued
7 this particular property?

8 A I did.

9 Q So you found that the - the highest and best use
10 which you say is continued school use?

11 A Right.

12 Q And then you considered other uses when you - when
13 you - when you came to your valuation; is that correct?

14 A That's fair.

15 Q Okay. Okay. So if we could look at page thirty-
16 seven which is your comp table. I have a few questions
17 about each of these.

18 A Sure.

19 Q So for the - the first one is 234 240 and 250 Greene
20 Street in New Haven, correct?

21 A Correct.

22 Q And that - that was a single building located -
23 located in New Haven, obviously?

24 A Yes.

25 Q And in your - in Exhibit A on - on page thirty-seven,
26 that first column under sale one, there's a proposed use row
27 which is just under billing - building data.

1 A Correct.

2 Q Do you see that?

3 A Yes.

4 Q And that proposed use of that building was to convert
5 to apartments; is that correct?

6 A That's correct.

7 Q And it wasn't purchased for - for a continued use as
8 a school -

9 A Correct -

10 Q - is that right?

11 A - it was a - a former school building with convent
12 and was purchased to convert to apartments.

13 Q Okay. And then the second - and then the second
14 comparable is 20 Clifford Street and 180 Main Street in
15 Hartford, correct?

16 A Right.

17 Q And once again, that was - well, first of all, that
18 was a multi-building, right?

19 A That's correct.

20 Q There was a - a church, a school, and a convent, I
21 believe?

22 A Correct.

23 Q And when that was sold, it was for a conversion to
24 residential apartments; is that - that correct?

25 A That's correct.

26 Q Now, did you specific - you didn't specifically
27 allocate any value to the school itself distinguished from

1 the other buildings that were sold as part of that sale, did
2 you?

3 A I did.

4 Q So what - what - where - so where is that? What's
5 the specific value of the - of the school itself versus the
6 convent and - and the church?

7 A So I mention on page forty-five of the report, and I
8 think I mentioned this in my direct exam as well, that there
9 were two different properties here. And that 20 Clifford
10 consisted of the school, that was about sixty thousand
11 square feet. That property was marketed on its own for a
12 million one or eighteen dollars a square foot of building
13 area. And when the sale was going to take place, the seller
14 wanted to package this 180 Main Street with it and - which
15 was an inferior property, and they sold the package for the
16 million four eleven price. That was allocated as nine
17 hundred and twenty-five thousand dollars for just the school
18 and four hundred and eighty-six thousand dollars for the
19 convent and church.

20 So I know the property 20 Clifford was on the market
21 for a million one. I know that the buyer allocated nine
22 hundred and twenty-five thousand dollars for it. So the
23 school itself is somewhere in that million dollar range for
24 sixty thousand square feet.

25 Q All right. The third one is the former St. - and -
26 St. Aedan and St. Brendan parish, correct?

27 A Correct.

1 Q The third comparable.

2 Which is located on Whalley Avenue in New Haven,
3 right?

4 A Correct.

5 Q And again, this was a sale that included multiple
6 buildings, correct?

7 A One property, but multiple buildings. Correct.

8 Q In - in fact, there was a church, a - a dormitory, a
9 rectory, a garage, and a school building; is that right?

10 A Correct.

11 Q And the - you didn't - you didn't allocate any
12 specific value to just the school building in this case, did
13 you?

14 A I did not.

15 Q Okay. And the purchaser, I think you testified,
16 didn't have any particular plans for the actual church at
17 the - at the time of sale, right?

18 A That's correct.

19 Q So the property was sold, but there were parts of it
20 that weren't being used; is that right?

21 A Well, there was no immediate plans.

22 Q There was no plan for it -

23 A Right.

24 Q - is that right?

25 A But of the total building area that was roughly
26 fifty-five thousand square feet, the church was seventy-five
27 hundred, so -

1 Q But you didn't -

2 A - twelve percent -

3 Q - actually specially allocate any - any value to, you
4 know, this much goes to the church, this much goes to the
5 school, and so on, you didn't do that, right?

6 A I did not. But I - what I can say is -

7 Q Well, I mean, it's a - I think it's a yes or no
8 question.

9 A Okay. The answer is no.

10 Q And so number four, that's the 120 Cedar Grove in New
11 London. And again, that's a school where the proposed use
12 was going to be to convert to multi-family residential,
13 correct?

14 A Correct.

15 Q And at the time of the sale, there weren't actual
16 approvals for conversion to multi-unit residential; is that
17 correct?

18 A That's correct.

19 Q And at the same time, there was, I think you
20 described it as community opposition to conversion to - of
21 that school to be used as multi-family residential, right?

22 A I think neighborhood opposition, but yes.

23 Q Okay. And at the - so at the time of the sale, there
24 - there was no - there was no approval, right - approvals,
25 right?

26 A That's correct.

27 Q Okay. And then lastly, number five located on State

1 Street in New Haven, that's an office building, correct?

2 A Correct.

3 Q It was never a school, was it?

4 A That's correct.

5 Q And the plan was for the - the proposed purchase -
6 the reason for the proposed purchase was conversion to
7 multi-family residential; is that correct?

8 A That's correct.

9 Q And - okay.

10 Actually, we can move to page - if you can turn to
11 page fifty-six of your - of your report.

12 Do they - so on page fifty-six there are a number of
13 definitions, correct?

14 A Yes.

15 Q And one of those definitions is the definition of an
16 extraordinary assumption; do you see that?

17 A Yes.

18 Q And it says - the definition says, an assumption
19 directly related to a specific assignment as of the
20 effective date of the assignment results, which if found to
21 be false, could alter the appraiser's opinions or
22 conclusions. Do you see that?

23 A I do.

24 Q And then in - there's a comment to it. And it says,
25 extra - extraordinary assumptions presume as fact otherwise
26 uncertain information about physical, legal, or economic
27 characteristics of the subject property or about conditions

1 external to the property, such as market conditions or
2 trends, or about the integrity of data used in an analysis.
3 Did - did I read that correctly?

4 A Yes.

5 Q And - and you quoted that directly from the USPAP
6 standards, correct?

7 A Correct.

8 Q Okay. Now, you make your valuation - it's initially
9 five hundred thousand dollars is your initial conclusion
10 without taking into account Mr. Jones' report, right?

11 A That's correct.

12 Q And then you subtract a hundred and ten thousand
13 dollars based on reductions that you made based on Mr.
14 Jones' report; is that correct?

15 A That's correct.

16 Q And you didn't - and you completely relied upon Mr.
17 Jones' report and whatever he told you, you're not an
18 environmental professional, right?

19 ATTY. SLKARZ: Ob - objection. It's a
20 compound question.

21 THE COURT: It is a compound question.

22 ATTY. SLKARZ: It is.

23 THE WITNESS: Sure.

24 ATTY. CESARONI: You - I guess I - I objected
25 to that before.

26 BY ATTY. CESARONI:

27 Q So you - you relied on Mr. Jones' report for any

1 environmental deductions that you made in your report?

2 A I relied on it, but I didn't take it at face value
3 without challenging certain assumptions that he made.

4 Q So you - you spoke with Mr. Jones -

5 A Yes.

6 Q - correct?

7 You're not an environmental professional, correct?

8 A That's correct.

9 Q You didn't perform any independent testing of the -
10 independent environmental testing of the subject property,
11 did you?

12 A I did not.

13 Q And you don't really understand or know the full
14 extent of what Mr. Jones did, right?

15 A I don't.

16 Q Okay. So you - you essentially assumed what the -
17 what was in Mr. Jones' report was accurate, right?

18 A Again, I - I think I've answered that, that the
19 issues that Mr. Jones identified I assumed to be accurate in
20 terms of that there was an underground storage tank, that
21 there was lead in the water, that there was lead paint on
22 windows, and that there was asbestos issues in the flooring.
23 I took his conclusions regarding that.

24 The amounts that he recognized in terms of costs to
25 deal with those problems, I didn't take those at face value.

26 Q Okay. And so you - you understand that Mr. Jones did
27 a - it's a - it's called a Phase One Environmental Report,

1 right?

2 A Yes.

3 Q And that is sort of the lowest form of environmental
4 due diligence, right?

5 A That is correct.

6 Q It typically doesn't include any testing, physical
7 testing, or sampling, right?

8 A Yes. For instance, if you were testing for ground
9 water, you'd do test borings and sample over time, that
10 would be a phase two. That's not what he did.

11 Q Okay.

12 A Phase One is really identifying problems, and he did
13 come up with orders of magnitudes of costs to deal with
14 those problems.

15 Q Right. But he also suggested there were areas that
16 needed further investigation, correct?

17 A Correct.

18 Q And, you know, so the Phase One is really based upon
19 things like review of the public records for example, right?

20 A That's one of the things.

21 Q And in your report you - you don't make any
22 extraordinary assumption with regard to - with regard to Mr.
23 Jones' report; is that correct?

24 A That's correct.

25 Q So you - you don't think there's an - it's an
26 extraordinary assumption to assume that everything in Mr.
27 Jones' report is accurate; is that correct?

NO: NNH CV 17 6072389 s

: SUPERIOR COURT

ELIYAHU MIRLIS

: JUDICIAL DISTRICT
OF NEW HAVEN

v.

: AT NEW HAVEN, CONNECTICUT

YESHIVA OF NEW HAVEN, INC.
FKA THE GAN, INC. FKA

: DECEMBER 9, 2019

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of New Haven, New Haven, Connecticut, before the Honorable Claudia Baio, Judge, on the 9th day of December, 2019.

Dated this 26th day of December, 2019 in New Haven, Connecticut.



Sheila Demetro
Court Recording Monitor